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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. ~~811~~ 80

THOMAS HODGE, GEORGE HODGE, NETTIE POWELL, ANNA LEASE AND AGNES CRIPPEN,
Petitioners,

vs.

FIRST PRESBYTERIAN CHURCH OF STERLING, ILLINOIS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

J. J. LUDENS,
Counsel for Petitioners.

INDEX

Subject Index

Index to Cases Cited

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FIRST PRESBYTERIAN CHURCH OF STERLING, ILLINOIS

PETITION FOR WRIT OF CERTIORARI TO REVIEW A DECISION OF THE SUPREME COURT OF THE STATE OF IOWA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Thomas Hodge, George Hodge, Nettie Powell, Anna Lease and Agnes Crippen, hereby petition this Honorable Court that a writ of certiorari issue to review a judgment and decision of the Supreme Court of the State of Iowa which reversed a judgment of the District Court of Tama County, Iowa, and which ordered the District Court to admit to probate a document purporting to be the last will and testament of Mary E. Barrie.

Opinion Below

The opinion of the Supreme Court of Iowa (R. 31) is reported as *In re Barrie's Estate,* Iowa, 35 N. W. 2d, 658.

Jurisdiction

The opinion of the Supreme Court of Iowa was rendered January 11, 1949. A timely application for rehearing was made and was denied by the Supreme Court March 11, 1949, and final judgment was thereupon entered. The jurisdiction of this Court is invoked under Section 1257 (3) Title 28 United States Code. (Also Sec. 344, Par. B, U. S. Code, 1946 Ed.)

Questions Presented

1. Whether under the full faith and credit clause of the Constitution of the United States (Article 4, Section 1) the judgment of a court of last resort of the State of Illinois, denying probate to the purported will of a decedent, who died domiciled in Illinois, upon the ground that the will had been revoked, so that the decedent died intestate, is conclusive and binding upon the courts of the State of Iowa in an action brought in Iowa, by the same parties, to probate the same purported will in respect of real estate owned by the decedent and located in Iowa.

2. Whether under the full faith and credit clause of the Constitution of the United States the judgment of a court of last resort in the state of a decedent's domicile, that the decedent died intestate, is conclusive and controlling upon the courts of all other states.

3. Whether the Supreme Court of Iowa committed error by holding that the judgment of the court of last resort of the state of the decedent's domicile that the deceased died intestate, is not *res judicata* in an action between the same parties and involving the same question in the courts of another state.

4. Whether the judgment of the Supreme Court of Illinois, the domicile of the deceased, is controlling upon all other courts upon the question whether the deceased died testate or intestate.

Summary Statement of Matters Involved

Mary E. Barrie died December 16, 1944, domiciled at and a resident of the City of Sterling, Whiteside County, Illinois, where she owned real and personal property. About 1928 she had executed an instrument which at one time she intended as her will, but after her death the instrument was found in a mutilated condition indicating that it had been revoked.

The First Presbyterian Church of Sterling, Illinois and others who were named as legatees in said instrument, filed a petition in the Probate Court of Whiteside County, Illinois, to admit said instrument to probate. The petitioners herein, being the sole heirs of Mary E. Barrie, filed objections and upon a hearing the Probate Court of Whiteside County, Illinois admitted the instrument to probate. The petitioners herein appealed to the Circuit Court of Whiteside County, Illinois, which court affirmed the decision of the Probate Court, but on appeal to the Supreme Court of Illinois, it was decided by said court that the instrument had been revoked during the lifetime of Mary E. Barrie, and the Supreme Court ordered the Probate Court of Whiteside County, Illinois to refuse it to probate. A petition for rehearing was filed and denied on March 18, 1946 and the said judgment was final, being by the court of last resort in Illinois. This decision is reported under the title, "In re Barrie Estate," in 393 Illinois, page 111.

The Probate Court of Whiteside County, Illinois, following the mandate of the Supreme Court of Illinois, entered an order denying said instrument to probate. The property both real and personal of Mary E. Barrie situated

in the State of Illinois was administered as intestate property.

The decedent, in addition to the property owned in Whiteside County, Illinois, owned a farm of about 160 acres in Tama County, Iowa. After the judgment and orders above mentioned as reported in 393 Ill. pg. 111, and the order of the Probate Court of Whiteside County were entered, the said First Presbyterian Church of Sterling, Illinois, which was one of the petitioners to have the instrument admitted to probate in Illinois, on the 19th day of July, 1946, filed a petition in the District Court of Tama County, Iowa, where the land of said Mary E. Barrie was situated, asking that said instrument be admitted to probate as a will in the State of Iowa.

The petitioners herein, on December 2, 1946, filed objections to the petition to probate said instrument in the District Court of Tama County, Iowa, (R. 3), which objections stated the proceedings in the State of Illinois and the results of said proceedings in the courts of Illinois; that the proceedings in Iowa were between the same parties as in Illinois; that the judgments of the Supreme Court of Illinois and the Probate Court of Whiteside County were in full force and effect and under the Constitution of the United States, were entitled to full faith and credit in the courts of Iowa; that said alleged instrument had not been admitted to probate in any court of competent jurisdiction. Your petitioners herein also filed copies of the decision and judgment of the Supreme Court of Illinois and judgment and order of the Probate Court of Whiteside County, Illinois, duly authenticated according to the act of Congress (Sec. 687, U. S. Code, 1946 ed.).

Upon a hearing before the District Court of Tama County, Iowa, the objections were sustained and the instrument was denied probate, whereupon the First Presbyterian Church of Sterling, Illinois took an appeal to the

Supreme Court of Iowa, which court reversed the judgment of the District Court and ordered the District Court to admit said instrument to probate. The Supreme Court of Iowa held, four of the nine judges dissenting, that the Illinois judgment holding that the decedent had died intestate was not conclusive or *res judicata* as to probate proceedings in Iowa.

Reasons Relied upon for Allowance of Writ

1. That the Supreme Court of Iowa has erroneously decided a Federal question of substance not heretofore determined by this Court, by holding that under the full faith and credit clause of the Constitution of the United States (Article 4, Section 1) the judgment of a court of last resort of the State of Illinois, denying probate to the purported will of a decedent who died domiciled in Illinois, upon the ground that the will had been revoked, so that the decedent died intestate, is not conclusive and binding upon the courts of the State of Iowa, in an action in Iowa by and between the same parties, to probate the same purported will, in respect of real estate owned by the decedent and located in Iowa.

2. That the Supreme Court of Iowa has erroneously decided a Federal question of substance not heretofore determined by this Court, by holding that under the full faith and credit clause of the Constitution of the United States the judgment of a court of last resort of the state of a decedent's domicile, that the decedent died intestate, is not conclusive and controlling upon the courts of all other states.

3. That the Supreme Court of Iowa has erroneously decided a Federal question of substance not heretofore determined by this Court, by holding that the judgment of the court of last resort of the state of the decedent's

domicile, that the deceased died intestate, is not *res judicata* in an action between the same parties and involving the same question in the courts of another state.

Prayer for Relief

WHEREFORE, Petitioners pray that a writ of certiorari issue out of and under the seal of this Court, which writ shall command the said Supreme Court of Iowa to certify and send to this Court a full and complete transcript of the record of proceedings in said court, including a transcript of the proceedings on appeal to the Supreme Court of Iowa; said proceedings in the Supreme Court being numbered and entitled "Supreme Court Docket No. 10,146, in re Estate of Mary E. Barrie, Deceased; First Presbyterian Church of Sterling, Illinois, et al., Appellees, vs. Thomas Hodge, et al., Appellants" to the end that this case may be reviewed and determined by this Court as provided by the Statutes of the United States; and the judgment and decision of the Supreme Court of Iowa in the case be reversed by this Court, and the Petitioners given such other relief as to this Court may seem proper.

Respectfully,

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Attorney for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Statement of Case

The facts, the jurisdiction of this Court, the reasons relied upon for the allowance of the writ, and the statutes and the matters involved have been sufficiently described in the petition so that they will not be repeated here.

Specifications of Errors to Be Urged

The Supreme Court of Iowa erred:

1. In reversing the judgment of the District Court of Tama County, Iowa.

2. In ordering that the purported will of Mary E. Barrie be admitted to probate.

3. In holding that under the full faith and credit clause of the Constitution of the United States the judgment of a Court of last resort of the State of Illinois denying probate to the purported will of a decedent who died domiciled in Illinois, upon the ground that the will had been revoked so that the decedent died intestate, is not conclusive and binding upon the Courts of the State of Iowa, in an action in Iowa by and between the same parties to probate the same purported will, in respect of real estate owned by the decedent and located in Iowa.

4. In holding that under the full faith and credit clause of the Constitution of the United States the judgment of a Court of last resort of the State of a decedent's domicile, that the decedent died intestate, is not conclusive and controlling upon the Courts of all other States.

5. In holding that the judgment of the court of last resort of the decedent's domicile that the deceased died intestate, is not *res judicata* in an action between the same parties

and involving the same question in the courts of another State.

Summary of Argument

Whether or not a decedent died testate or intestate is determined according to the law of the decedent's domicile.

When this question has been answered by the court of last resort of the State of the decedent's domicile, that determination, under the full faith and credit clause of the Constitution, is *res judicata* and conclusive upon all other courts.

ARGUMENT

I

The law of the domicile governs as to whether or not a person died testate or intestate.

As to the effect of refusal to probate in Illinois, the Supreme Court of Illinois, in the case of *Davis* v. *Upson*, 230 Ill. 327, says as follows:

> "If the decision of the court of the domicile of a deceased person does not control in the matter of whether the deceased died testate or intestate there must necessarily result a multitude of decisions upon that question, and if a devisee may carry a will from State to State and present it for probate in each State where the decedent had a debt due him at the time of his death, until he can find a State under the laws of which it can be admitted to probate, great confusion in the settlement of estates would follow."

In the case of *Gailey* v. *Brown*, 169 Wis. 444, 171 N.W. 945, the facts were as follows: A resident of Illinois owned real estate in the State of Wisconsin. He executed a will in conformity with the laws of Illinois and after making the will, married. Under the laws of Illinois, marriage revokes a will. The court of Illinois decided that the will was

therefore revoked. Some of the heirs attempted to probate the will in the State of Wisconsin where the testator owned land but the court of Wisconsin refused to admit the will to probate, and said:

> "The determination of these questions legally and necessarily includes the inquiries by such foreign courts whether or not testator made a valid will and, if so, whether it had been legally revoked before his death; and such judgment of the courts in sister states is to be accepted here as fixing the status of the instrument propounded as a will and under these statutes has the same effect as if the original proceeding had been in the court of this state. It is considered that it results from this statutory modification of the common law that the question whether or not a purported will has been revoked is necessarily an inquiry in such foreign probate proceeding and is committed to the court of testator's domicile for determination under the law of his residence. It must therefore follow that the law of Illinois concerning the revocation of wills controls in the instant case."

In Page on *Wills*, Sec. 572, the law is set forth as follows:

> "It is a well established principle of law applicable to wills that the jurisdiction to admit to probate a will of decedent depends upon his domicile at the time of his death. The theory of many states in which common law is enforced is that the state within whose territorial limits the testator was domiciled at the time of his death may admit his will to probate even though the will was made in another state. It is universally held by all courts that the will should first be admitted for probate at the domicile of the testator."

In Story on *Conflict of Laws*, 7th Ed., Sec. 479g, it states as follows:

> "Another question may also be propounded. Suppose at the time of the making of a will or testament,

> the testator is domiciled in the place where it is made, and he afterwards removes to another place where he is domiciled at his death; does such removal change the rule of construction so that if there is a difference between the law of the original domicile and that of the new domicile, as to the interpretation of the terms, the law of the new domicile is to prevail? or, does the interpretation remain as it was by the law of the original domicile? This question does not seem to have undergone any absolute and positive decision in the courts acting under the common law. (It has been held, however, in such case, that unless the will was executed according to the law of the person's last domicile, and the place of his death, it would not be valid, although made according to the laws of the testator's domicile at the time it was made.")

In Story on *Conflict of Laws,* 7th Ed., Sec. 491c, it was held that whether a deceased person died intestate or not must be determined by the law of the place where he was domiciled at the time of his death.

In the case of *Rackemann* v. *Taylor,* 204 Mass. 394, 90 N.E. 552, the court said:

> "If he has property in another state or country, it may be necessary to prove the will or to take out administration there, either for the purpose of obtaining and collecting the property, or for the security of local creditors or the protection of rights of the state to receive taxes, or of residents of the state who ought to get what they are entitled to receive from the estate, without being obliged to follow the property into another jurisdiction. But such probate of a will or such administration of an intestate estate is always merely ancillary. It is not for the purpose of establishing rights of succession, whether under a will or otherwise. Those are to be established in the courts of the state or country where the deceased person had his domicile. The strictly ancillary character of such proceedings

has been recognized by many decisions of the courts of our own state, as well as of courts elsewhere."

In the case of *Patterson* v. *Dickinson*, 193 Fed. 328, the court said:

> "The superior court of Los Angeles county was not vested with jurisdiction primarily to decide whether the instrument which had been admitted to probate in Missouri as the will of Rachael E. Dickinson was what it purported to be. The determination of that question belonged exclusively to the probate court of the decedent's domicile. That court having finally adjudicated the question, and having decreed that the instrument was not the last will and testament of the decedent, and that she died intestate, its judgment must be held to be final and conclusive upon any ancillary administration. The will having been set aside by the only court which had jurisdiction to set it aside, the judgment so rendered is by law conclusive of the right of the distributee under the proceedings of the court of ancillary administration to retain the property obtained by virtue thereof."

The law is again set forth in Redfield on *Wills*, 4th Ed., Vol. 1, pages 403, 406 and 410, as follows:

> "It is well settled by the authorities that the law of the domicile governs as to whether a person died testate or intestate. All questions of testacy or intestacy belong to the judge of the domicile. It is the right and duty of that judge to constitute the personal representative of the deceased. To the court of the domicile belongs the interpretation and construction of the will of the testator, to determine who are the next of kin or heirs."

The case of *Re Randall Estate*, 113 Pac. 2nd Ed. 54, was a Washington case where an attempt was made to probate a will which had been refused probate in the State of Idaho.

The Idaho Court had declared the will invalid and refused to admit it to probate. In that case the Court said:

> "Thus it has been finally and conclusively established by the courts of her domicile that Mary Elizabeth Randall died intestate. Further, generally speaking, it is held in this group of cases that courts of ancillary jurisdiction are bound by comity or the due faith and credit clause of the Federal Constitution to accept the adjudication of courts or domiciliary jurisdiction upon the validity or invalidity of wills."

II

Under the full faith and credit clause of the Constitution of the United States, the proceedings and judgment of the State of Illinois are res judicata and conclusive upon all other courts.

Section 1, Article 4 of the Constitution of the United States provides that full faith and credit should be given in each state to the public acts, records and proceedings of every other state.

In the case of *Tilt* v. *Kelsey*, 207 U. S. 43, 28 Sup. Ct. Rep. pg. 1, on the question of full faith and credit that is given to judicial proceedings in the Probate Courts of a state, where a person died and the Probate Courts of New Jersey administered his estate, there was a serious question at the time as to where he was domiciled, but the Probate Court of New Jersey assumed jurisdiction and settled the entire estate, including inheritance taxes. Sometime later the courts of New York where part of his estate was located, assumed jurisdiction and proceeded to levy an inheritance tax upon the property situated in the State of New York.

The Court of Appeals, the highest court in New York, affirmed the decision of the lower courts holding that the courts of New York had a right to assess inheritance tax against the property located in New York, notwithstanding the decision of the court of New Jersey.

An appeal was taken to the Supreme Court of the United States on the ground that it violated the constitutional provision of the full faith and credit to the judicial proceedings of other states, and the Supreme Court of the United States, in disposing of the case said that such provision was enacted to carry into effect the constitutional provision providing that they should have, in any court within the United States, such faith and credit as they have by law or usage in the courts in the state from which they are taken. They have no greater or less or other effect in other courts than in those of their own state. The Supreme Court decided that because the courts of New York did not respect the decision of the courts of New Jersey, their decision was wrong and they reversed the decision of the New York court.

This law is also well stated in the case of *Southern Pacific Railroad Co.* v. *United States,* 168 U. S. page 1, where the court said:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue, and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and, even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by a settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such

tribunals in respect of all matters properly put in issue, and actually determined by them."

In the case of *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. page 430, the court held:

"Under the full faith and credit clause and the act of Congress implementing it, what has been adjudicated in one state is res judicata to the same extent in every other state.

The Supreme Court is the final arbiter of the extent of exceptions to the full faith and credit clause and the act of Congress implementing it.

No considerations of local policy or law can impair the force and effect that the full faith and credit clause and the Act of Congress implementing it require to be given to a money judgment rendered in a civil suit outside the state of its rendition.

The purpose of the full faith and credit clause was to establish throughout the federal system the salutary principle of the common law, that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other state.

Under the full faith and credit clause, a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment, and a plaintiff may not for his single cause of action secure a second or a greater recovery.

The full faith and credit clause altered the status of the several states as independent foreign sovereignties each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation in which rights judicially established in any part are given nation-wide application."

III

The Doctrine of Res Judicata

The doctrine of *res judicata* precludes these parties from litigating the same matter in the State of Iowa which was adjudicated in the courts of Illinois for the reasons set forth in Section II of this argument.

> "The judgment or decree of a court of competent jurisdiction upon the merits concludes the parties and privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal. Any right, fact, or matter in issue, and directly adjudicated upon, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered upon the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and privies whether the claim or demand, purpose or subject matter of the two suits is the same or not."
>
> 34 *Corpus Juris*, page 743.

> "The doctrine of res judicata rests on the two maxims that 'a man should not be twice vexed for the same cause,' and that 'it is for the public good that there be an end to litigation.' The very object of instituting courts of justice is that litigation should be decided, and decided finally. That has been felt by all jurists. It is long since a reason has been assigned why judgments should be considered final, and should not be ripped up again. Human life is not long enough to allow of matters once disposed of being brought under discussion again; and for this reason it has always been considered a fundamental rule that when a matter has once become res judicata, there shall be an end to the question. A party whose interests are placed in jeopardy by a trial has a right to judicial immunity

from the consequences of further trials involving the same issues."

Freeman on *Judgments*, 5th Ed., Sec. 626.

"A decree denying probate to an instrument offered for that purpose, if on the merits, is conclusive of all the facts necessary to support it, and would ordinarily bar a second attempt to probate the same instrument."

Freeman on *Judgments*, 5th Ed., Sec. 815.

"But it is now settled that judgments rendered by courts of sister states are entitled to the same recognition accorded to judgments of domestic courts; and that they are entitled to the same faith and credit in every state as in the state where rendered so that they are or are not valid and conclusive in other states accordingly as they are or are not in the state of their rendition. The obligation to accord full faith and credit to a valid judgment, other than for lack of jurisdiction of the person or subject matter, or for the enforcement of a penalty, is without limitation. Furthermore, courts should not determine what part of a judgment of a court of another state should be effective and what part not, as if such judgment is regular on the face of the record it must be given effect in all its terms. Also the constitutional statutory provisions referred to protect a judgment of a court of a sister state against collateral impeachment."

34 *Corpus Juris*, pages 1125-1127.

"This doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts to the end that rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect."

Hart Steel Co. v. *Railroad Supply Co.*, 244 U. S. 294.

This is not a case in which the question of the construction of a will is left to the court in which the land lies. That is an entirely different question. We agree that if there is a will and the land lies in another state from that of the domicile of the testator, the state in which the land lies can decide how the will applies to that land, but before that rule can be invoked, there must be a will in the state of the domicile.

If an instrument is a will, it is either a domestic or a foreign will. This instrument cannot be a foreign will in the State of Iowa because it is not a will in the State of Illinois, the state from which it came. Therefore, it is not a will at all. The courts of Illinois decided that this instrument was not a will and therefore the person died intestate.

Conclusion

We urge this Court to grant the writ for the following reasons:

1. The decision of the Supreme Court of Iowa is in conflict with the decisions of practically all other states in the Union and will cause great confusion in the law of wills by allowing this decision to stand.

2. Petitioners herein have been denied substantial constitutional and federal rights by the decision of the Supreme Court of Iowa.

Respectfully submitted,

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